IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

CRP.No. 126 of 2007

EA.30/2006 IN EP.111/03 IN OS.209/2000 of MUNSIFF'S COURT, SASTHAMCOTTA

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REVN. PETITIONER/JUDGMENT DEBTOR/DEFENDANT:

J. SREEKUMAR,
SREEKALA BHAVANAM,
PULIKULAM MURI,
SOORANAD NORTH VILLAGE.

BY ADV. SRI.A.AHZAR

RESPONDENT/DECREE HOLDER/PLAINTIFF:

S. GOPALAKRISHNA PILLAI,
CHERUVINKALETHU VILAYIL,
PAVUMBA NORTH MURI,
PAVUMBA VILLAGE.

BY ADV. SRI.G.GOPALAKRISHNAN NAIR (EDAPPALLY)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

C.R.P.No. 126 of 2007

ORDER

This civil revision petition is filed by the judgment debtor in O.S.No.209/00 on the file of the Munsiff's Court, Sasthamcotta. The respondent/ decree holder, in execution of the money decree obtained against the petitioner, proceeded against the property belonging to the petitioner, which had been attached before judgment. When the property was brought to sale in execution, he raised an objection to the attached property being sold on the ground that he is a Mason and that the property that is sought to be brought to sale stands exempted from attachment and sale in view of proviso (c) to Section 60(1) of the Code of Civil Procedure. Proviso (c) to Section 60(1) CPC is extracted below for easy reference:

> "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to [an agriculturist or a labourer or a domestic servant] and occupied by him."

The fact that the petitioner is a Mason is not disputed by the respondent. It is not seen disputed that the petitioner is residing in the property. However, the petitioner has not tendered evidence so as to enable him to claim benefit under proviso (c) to Section 60((1) CPC. To claim the benefit under the proviso (c) to Section 60(1) CPC, he has to establish that the house or other building with the land immediately appurtenant thereto is occupied by him. It was, in the absence of the petitioner adducing any evidence on that aspect, that E.A.No.30/06 filed by him, claiming exemption, was dismissed. All the same, the respondent also is not able to deny that the petitioner is residing

in the property that is brought to sale. In the circumstances, I think that the order impugned has to be set aside and the matter remitted back to the execution court for fresh adjudication, enabling both parties to adduce evidence.

In the result, allowing this revision, I set aside the order impugned and remit the case back to the execution court to decide the liability of the attached property being brought to sale in execution, after enabling both sides to adduce evidence in the matter. Both parties shall appear in the court below on 29.3.2007.

6th March, 2007 (K.P.Balachandran, Judge)

tkv